

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

ST. CROIX TRIBAL COUNCIL)

v.)

U.S. DEPARTMENT OF LABOR)

Case No. 85-JTP-9

FINAL DECISION AND ORDER

This case arises pursuant to Section 166 of the Job Training Partnership Act (JTPA) 29 U.S.C. §§ 1501, 1576 (1982). It concerns **the nondesignation** of the St. Croix Tribal Council (Tribe) as grantee of the Section 401, Native American Programs **under** JTPA, § 1671, for Program Years 1985-1986. An order asserting jurisdiction was issued January 15, 1986.

As the Order Asserting Jurisdiction noted at 1, "the single question of law in this case is the statutory interpretation of Section 106(b) of the Comprehensive Employment and Training Act [CETA]" That question has been resolved by the Supreme Court's decision in Brock v. Pierce County, ___ U.S. ___, 106 S.Ct. 1834 (1986), which held that the Secretary does not lose jurisdiction to recover misspent CETA funds even when the **120-** day period for a final determination specified by Section 106(b) is not met.

This case is an appeal by the Tribe from **its nondesigna-** tion as a JTPA grantee. The Tribe was disapproved by the Grant Officer for the JTPA grant because it had not paid a debt of over \$95,000 on a previous CETA grant. The Tribe claimed that

the **120-day** issue was relevant to this appeal because the underlying **CETA** debt allegedly was not finally determined within **120** days. The Court's decision in **Brock v. Pierce County** forecloses this attack on the CETA debt.


The other arguments the Tribe has raised before me were considered and correctly decided by the ALJ. The full record in this case has been reviewed and it suggests no basis for disturbing the **ALJ's** decision which carefully sets forth the facts and issues in this case.

The fact that the Tribe attempted to challenge its duly established **CETA** debt three years after the final determination was made, and sought to use the pendency of that belated challenge to overturn its nondesignation of the JTPA grant, is not a scenario that can be sanctioned. See In the Matter of St. Croix Tribal Council, Case No. **85-CPA-41**, Secretary's Final Order issued November 12, 1986. The JTPA regulations deny financially nonresponsible grantees the opportunity to repeat their unsatisfactory management through new grants. 20 C.F.R. **§ 632.10(c)** (1986).

Accordingly, I adopt the Decision and Order of the ALJ and append it to this order. The order of the ALJ denying the motion for summary judgment of the St. Croix Tribal Council, granting the motion of the Department for summary judgment and affirming the decision of the Grant Officer not to designate

the St. Croix Tribal Council as a Native American grantee for
Program Years 1985 and 1986 IS AFFIRMED.

SO ORDERED. ..



Secretary of Labor

Dated : NOV 14 1986
Washington, D.C.

U.S. Department of Labor

Office of Administrative Law Judges
1111 20th Street, N.W.
Washington, D.C. 20036



In the Matter of

ST. CROIX TRIBAL COUNCIL

V.

U.S. DEPARTMENT OF LABOR

Case No. 85-JTP-9

DECISION AND ORDER

This case arises under the Job Training Partnership Act of 1982, 29 U.S.C. **§1501 et seq.** (hereinafter the "**Act**" or "**JTPA**"), and the rules and **regulations** issued thereunder in Title 20 of the Code of **Federal** Regulations, Part 626 through 636.

The Act is designed to establish programs to prepare youth and unskilled adults for entry into the labor-force and afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment. (20 C.F.R. **§626.1**) The purpose of grants issued pursuant to Title IV, Part A, **Section 401** of the Act is to provide job training and employment activities for Native Americans. The Department is instructed under 20 C.F.R. **§632.170** to provide funds only to Native American grantees as defined in 20 C.F.R. **§632.10** and designated in accordance with that regulation.

In the instant proceeding, the St. Croix Tribal Council (hereinafter "the Tribe") is appealing the Grant Officer's decision disapproving the Tribe's application for designation as a Job Training Partnership Act, Title IV, Section 401 grantee for Program Years 1985 and 1986.

The Department of Labor has the burden of **production** to support the Grant Officer's decision. This requires the preparation and submission of an administrative file in support of the decision. Thereafter, the party seeking to overturn the Grant Officer's decision has the burden of persuasion, in accordance with 20 C.F.R. **636.10(g)**. The standard employed upon review is whether there exists reliable and probative evidence to uphold the decision of the Grant Officer. See 20 C.F.R. **§636.10(h)(1)**.

Both parties have filed motions for summary judgment. Under Rule 56 of the Federal Rules of Procedure and the corresponding regulations applicable to this proceeding, 29 C.F.R. **§18.40** and **.41**, a motion for summary judgment will not lie unless there is no genuine issue as to any material fact. By filing their respective motions for summary judgment, both parties necessarily assert that none of the facts necessary to **decide this** case are in dispute. Upon consideration of the pleadings, the administrative file, and all other documents submitted in this case, the Court agrees with the parties that no genuine issue as to any material fact exists, and,

thus, ~~itis~~ appropriate to proceed ~~to decision~~ on the merits of this matter without conducting an evidentiary hearing. 1/

Findings of Fact and Conclusions of Law

The facts of this case are as follows: the Tribe received a grant from the Department of Labor in 1978 in the amount of **\$361,980.00** (Grant No. 99-9-497-30-168) pursuant to the Comprehensive Employment and Training Act, as amended, 29 **U.S.C. §801**. After an audit investigation by the Department, the Grant Officer issued an Initial Finding and Determination which was forwarded to the Tribe on February 25, 1982 disallowing costs in the amount of **\$95,771.00**. On April 26, 1982, the Grant Officer issued a Final Determination affirming the disallowance and requesting repayment (AF 38-43). In accordance with 20 C.F.R. **\$676.88**, the Tribe was provided an opportunity to request a hearing with regard to the Final Determination. The Tribe failed to utilize the authorized appeal procedure, and the debt established by the Final Determination evolved into a legal claim. Subsequently, demand letters were sent by the **Department** on June 15, 1982 (**AF 30-31**), September 30, 1982 (**AF 28-29**), and October 29, 1982 (**AF 25-27**). This claim remains unresolved.

On March 1, 1985, the Grant Officer disapproved the Tribe's application for designation as a Job Training Partnership Act, Title IV, Section 401 grantee for the Program Years 1985 and 1986. Such disapproval was based on the fact that the Tribe had failed to meet the responsibility review criteria for Section 401 grantees outlined in 20 C.F.R. **\$632.10(c)(1)**. Specifically, the Department's **effort** to recover a prior debt established on April 26, 1982, for which **three** demand letters were sent, had been unsuccessful. (AF 10-12). On March 14, 1985, the Tribe petitioned for reconsideration of the Grant Officer's decision denying designation (AF 8-9). On April 18, 1985 the Tribe filed an appeal from the April 26, 1982 Final Determination disallowing costs in the amount of \$95,771.00 (Case No. 85-CPA-41). On April 26, 1982 the Grant Officer, after considering the Petition for Reconsideration, concluded that the original **determination** was correct. (AF 7). On May 16, 1985, the Tribe **filed an** appeal in accordance with 20 C.F.R. **\$636.10** with respect to the Grant Officer's final decision denying designation. (AF 4).

The specific issue **before** this **Court** is whether the Grant Officer **properly** denied the Tribe designation as a Job Training Partnership Act, Title IV, Section 401 grantee for Program Years 1985 and 1986. The Grant Officer's denial was based upon a determination that the Tribe failed to resolve an outstanding debt of **\$95,771.00** existing from a prior year Native American CETA grant. (AF **10,12**).

^{1/} The evidentiary record in this matter consists of the administrative file of Case No. 85-JTP-9 submitted on June 25, 1985 (hereinafter "**AF**") the affidavit of Donna Bell, marked as Tribe exhibit A, and the **attached exhibits** marked by the Tribe as Respondent's exhibits 1 through 3. The administrative file and the exhibits are received in evidence.

Under 20 C.F.R. 5632.170, the Department is instructed to provide funds only to Native American grantee designated in accordance with 20 C.F.R. **§632.10** which sets forth specific eligibility requirements which an applicant must satisfy to be designated a grantee. Section **632.10(b)** provides that in order for an applicant to be designated, it must have the "capability to administer an Indian and Native American employment and training program," defined further on as meaning, inter alia, an "ability to properly administer government funds." Section **632.10(c)** further provides that: "[t]he Department will not designate an organization in cases where it is established that (1) the agency's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful." The Grant Officer apparently relied specifically upon 20 C.F.R. **§632.10(c)** as his authority to deny the Tribe designation as a grantee.

The initial question for determination, and the Tribe's main point of contention, is whether there are outstanding debts owed by the Tribe which were established by "final agency action." The Tribe points out that the unresolved debt upon which the Grant Officer relied in denying designation was appealed on April 18, 1985 and is still currently under appeal. (Case No. 85-CPA-41) Thus, the Tribe contends, there has, as yet, been no final agency action **with regard** to the **\$95,771.00** debt. The Tribe's argument is unconvincing. The evidence of record establishes that a Final Determination was issued on April 26, 1982 disallowing costs in the amount of **\$95,771.00**. The Tribe, although provided with an opportunity to request a hearing on such final determination failed to do so in a timely fashion. The applicable regulation specifically directs that:

"The request for hearing shall be mailed by certified mail return receipt requested not later than 10 days after receipt of the Grant Officer's determination .. and shall specifically state those provision of the determination upon which a hearing is requested. Those provisions of the determination not specified for hearing, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review."
20 C.F.R. **§676.88(f)**

In the instant matter, the request for hearing was not filed until April 18, 1985, almost three years after the Final Determination. Aside from the untimeliness of such an appeal, it is noted that the appeal was filed after the Grant Officer's March 1, 1985 decision denying the Tribe designation. Thus, at the time the Grant Officer issued his decision of nondesignation, the **absence** of any appeal, timely or untimely, fully justified treatment of the debt as having been established by final agency action. Moreover, the Petition for Reconsideration stated only "We are disputing the above action" (AF 9) and, thus, provided the Grant Officer with no further information as to the existence of an appeal from the earlier debt." Therefore, the Grant Officer's April 26, 1985 conclusion affirming his original determination was justified. (AF 7).

By **virtue** of the Tribe's noncompliance with the regulatory framework i.e. failure to timely file an appeal, it is presumed, in the absence of agency action to the contrary, that the Tribe's debt has been established by "**final agency action.**" Failure to timely request a hearing from the Final Determination is a situation which was **anticipated by** the regulations in that the entire determination is considered resolved and not subject to further review. 20 C.F.R. §676.88(f) A timely hearing was not requested by the Tribe, thus, the Grant Officer's Final Determination is not subject to review. In view of the foregoing facts, it is concluded that there is an outstanding debt owed by the Tribe which was established by final agency action. 2/

The next question for determination is whether the Department's efforts to recover an established debt have been unsuccessful. The record reveals that three demand letters were issued. Furthermore, it is uncontested that the Tribe has not paid the debt established on April 26, 1982. The Tribe has argued that the Grant Officer's refusal to settle the debt by means of a non-cash agreement as proposed by the Tribe was an **abuse** of discretion. Moreover, to deny designation based upon such debt after refusing to accept the proffered **non-cash** repayment method was arbitrary and capricious. A review of the documentary evidence on record, however, supports the conclusion that the Tribe's contention is without merit. The comptroller of the Tribe, Donna Bell, had indicated to the Department that the Tribe lacked sufficient cash (i.e. non-Federal funds) to pay the debt, and wished to use a non-cash repayment method. (AF 23-24) The Department, however, advised that before such a method of repayment would be approved, documentary evidence of the Tribe's current financial **hi-**-tion had to be submitted for evaluation (AF 23-24, 25-27). The record fails to contain any reliable documentary evidence showing the Tribes financial inability to pay its debt. 3/ The Grant Officer's refusal to accept evidence of financial **status** not in compliance with his expressed standards (e.g. certified copy of a recent comprehensive audit, an IRS Form 990 or a State franchise tax return) is not an abuse of discretion. The Department, which **disburses** the funds, has the authority to negotiate an appropriate method of repayment, and it is within its discretion to determine what is acceptable. Thus, it is concluded that the Grant Officer acted within his discretion, and that the Department's **efforts** to recover the established debts were unsuccessful.

2/ The numerous arguments forwarded by the Tribe regarding the validity of the debt are untimely and inappropriate in this forum. Such arguments should have been raised at a hearing following the Final Determination. At this point, the Final Determination is no longer subject to review.


3/ The record contains an affidavit by Donna Bell stating that the **Tribes** only source of outside income is from Bingo, totalling \$40,000 per year, and therefore the Tribe cannot repay the claim in cash (Tribe exhibit A). The record also contains a letter dated May 15, 1985 from Ray Roe, the auditor of the Tribe, stating that while he has *neverdone* a complete audit he feels the debt is beyond the Tribe's financial capability (**Respondent's** exhibit 2).

In sum, the Department's efforts to recover a debt established on April 26, 1982, for which three demand letters were sent, and established by final agency action, were **unsuccessful**. Thus, the Grant Officer properly ruled that the Tribe failed to meet the responsibility criteria for Section 401 grantees outlined in 20 C.F.R. §632.10(c)(1).

ORDER

It is therefore Ordered that:

The Department of Labor's motion for summary judgment is granted; the St. Croix Tribal Council's motion for summary judgment is denied; and the decision of the Grant Officer denying designation of the Tribe as a grantee for the Program Years 1985-1986 Native American grant be and it hereby is affirmed.



WILLIAM H. DAPPER
Administrative Law Judge.-

Dated: 25 NOV 1985
Washington, D.C.

WHD/yw

CERTIFICATE OF SERVICE

Case Name: St. Croix Tribal Council v. United States
Department of Labor

Case No. : **85-JTP-9**

Document : Final Decision and Order

A copy of the above-referenced document was sent to the
following persons on November 14, 1986.



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